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NOTES ON CURRENT LEGISLATION

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Bank Depositors' Guaranty Fund. A law enacted in Oklahoma, December 17, 1907, provides for a guaranty fund for the protection of bank depositors. The fund is secured through an assessment of 1 per cent of the bank's daily average deposits (less the deposit of State funds properly secured) for the preceding year. If the fund is depleted from any cause, the State banking board is required to levy a special assessment to cover the deficiency. Every bank organized and existing under the laws of the State is made subject to the provisions of the act and any national bank in the State, approved by the bank commissioner, may voluntarily give its depositors the protection of the guaranty fund by complying with terms and conditions, in harmony with the purpose of the act, to be agreed upon by the State banking board, the bank commissioner, and the comptroller of the currency of the United States.

British Companies Act. On August 28, 1907, the British parliament passed the act which is officially known as the Companies Act of 1907 (7 Edw. 7. c. 50). This act grew out of the limited company reforms which first found expression in the Companies Act of 1900, and is largely supplementary to that act. British limited company legislation is embodied in the Companies Act of 1862 and amendments. Until the Companies Act of 1900, these laws and amendments were enacted to further the interests of the companies, in the belief that commercial and industrial development was dependent upon freedom of company organization and management. The evils arising from secrecy of organization and management resulted in 1894 in an investigation by a committee of which Lord Davey was chairman. This committee was empowered "to inquire what amendments are necessary to the Companies Act to the better prevention of fraud in relation to the formation and management of companies." After a careful investigation the committee reported its conclusions together with a draft bill in June, 1895 (Parl. Papers, vol. 88, 1895). The draft bill reported went through a long period of parliamentary incubation and finally emerged in the Companies

Act of 1900, considerably changed and weakened, but in the main following the recommendations of the committee. The act was essentially one of publicity, it being argued that while "the legislature cannot supply the people with prudence, judgment or business habits * * * yet it must be generally acknowledged that a person who is invited to subscribe to a new undertaking has practically no opportunity of making an independent inquiry," and hence is at the mercy of unscrupulous managers. The law was criticised at the time as being unlikely to be effectual on account of the looseness and vagueness of its provisions. It was predicted¹ that it would make plenty of work for the courts and that its loopholes would enable its main provisions to be nullified. After a trial of seven years this opinion seems to be confirmed by the enactment of the law under consideration.

The new act interprets the existing law in many provisions where the courts have found it faulty. It amends important provisions which have been shown by experience to be ineffective, and supplements and strengthens by new provisions. Perhaps the most significant feature is the substitution of criminal for civil liability in case of companies or officers violating the law. From the standpoint of enforcement the act makes a distinct advance. The main provisions of the act are those relating to private companies, prospectuses and allotments, regulation and registration of debentures, payment of interest from capital and of commissions, duties of auditors, reports and balance sheets, foreign companies, general meetings, voluntary winding up, and duties and liabilities of directors. The act in the main follows the outline of the Companies Act of 1900.

PROSPECTUSES. Where a company does not issue a prospectus, a statement must be filed with the registrar in lieu thereof, signed by every director or proposed director. The main provisions of the Companies Act of 1900 are made to apply to all companies whether or not they issue an invitation to the public to subscribe, and no allotment is permitted until the minimum subscription has been secured. In place of the provision which made an attempt to separate companies which issue invitation to the public to subscribe from those which do not, it is provided that the law is not to apply to "private companies." A private company is defined as being "one which restricts the right to transfer its shares; limits the number of its members to fifty, and prohibits any invitation to the public to subscribe for any shares or debentures of the company."

¹ Barlow, "The New English Companies Act," *Econ. Jour.*, vol. XI, p. 180, 1901.

Certificates of all shares, debentures, and certificates of all debenture stock allotted or transferred must be prepared within two months following registration, but relief may be granted by the courts for mistakes or omissions. All companies and their officers are made criminally liable for failure to comply with the provision of these sections.

SHARES AT DISCOUNT AND COMMISSIONS. Discounts and commissions may be paid to sub-underwriters by any agent, vendor, or promoter, and it is declared that that power has always existed. All discounts and commissions must be stated in the summary required by the act of 1862 and appear on every balance sheet until "written off." This provision is to apply to companies which do not issue an invitation to the public to subscribe provided it is permitted by the company and the amounts specified in prospectuses or statement.

PAYMENT OF INTEREST OUT OF CAPITAL. This is permitted in case of shares of a company issued for buildings or provision of plants "which cannot be made profitable for a lengthened period," if it is authorized by the articles of association or by special resolution of the company and sanctioned by the board of trade after an investigation at the expense of the company. Such payments are to be made for a period not extending "beyond the close of the half year after the actual completion of the buildings or plant." The rate is fixed at a maximum of 4 per cent, the actual rate to be prescribed by order in council. Payments of such interest are not to operate to reduce the amount paid on shares in respect of which it is paid, and the accounts are to show the important data of such transactions.

MORTGAGES AND CHARGES. The provisions relating to mortgages and charges of the Companies Act of 1900 are increased and strengthened. Mortgages or charges on "any land wherever situate, or any interest therein, or a mortgage or charge on any book debts of the company" are added to the section enumerating the requirements of registration. All specified mortgages and charges enumerated are void against the liquidator and any creditor of the company unless "the prescribed particulars of the mortgage or charge together with the instrument (if any) by which the mortgage or charge is created or evidenced are delivered to or received by the registrar for registration within twenty-one days from the date of its creation, and if a mortgage is made void by such failure the money secured thereby becomes immediately payable. This new law also makes provision for registration of mortgages and of charges made outside or inside of the United Kingdom on property situated outside the United Kingdom. Negotiable instruments given to secure

the payment of any book debts deposited for security are not to be treated as a mortgage or charge on those book debts, nor shall debentures entitling the holder to a charge on land be deemed an interest in land. When commissions, allowances, or discounts have been paid directly or indirectly in consideration of subscribing or agreeing to subscribe or procuring subscription, the particulars for registration must include the amount or rate of commission, discount, or allowance, though the failure to do so does not affect the validity of the mortgage. The endorsement by the registrar's certificate upon debenture or certificate of debenture stock as required by the Companies Act of 1900 is construed by the new act as not requiring the endorsement of any mortgage upon debentures or certificate of debenture stock issued prior to the mortgage. Every company is required to furnish all details required for registration and every director, manager, secretary, or other person who is knowingly a party to the default is liable to conviction and a fine of £50 per day during the continuance of the default. The penal provisions of section 43 of the Companies Act of 1862 are made to apply to any failure by a company to keep a register of mortgages and charges as required by law. Any person obtaining an order to appoint or who does appoint a receiver for any company must report that fact to the registrar within seven days or be subject to conviction and fine of £5 per day for each day of default. All companies are required to forward to the registrar within three months after the commencement of the act, a statement of the debts of the companies secured by mortgages or charges which would have required registration if created after the commencement of the act, except those already required to be registered, but failure is not to prejudice the rights of the holders. Criminal liability of £50 per day for default is fixed upon the company and the officers responsible. Floating charges given within three months of the winding up of a company are invalid unless the solvency of the company at the time be shown, except to the amount of any cost paid in consideration for the charge together with interest. Conditions in debentures which make them redeemable or irredeemable only on the happening of a contingency however remote or at the end of a period however long, do not make them invalid, "any rule of equity to the contrary notwithstanding."

REDEMPTION OF DEBENTURES. Companies are permitted to keep alive any debentures redeemed prior to the date of their obligation to do so, for purposes of reissue, either of the same debentures or of others in their place. All rights and priorities flow with such reissues as if they had not been previously issued. Debentures transferred to a

nominee of the company and again transferred by the nominee are considered reissues. Debentures deposited to secure advance on current account are not to be considered redeemed by the payment of such accounts. Reissues are subject to stamp duties, but not to any provisions limiting the amount or number of debentures to be issued.

REGISTERS. The register of mortgages required to be kept by section 43 of the Companies Act of 1862 is made accessible to the public on the payment of a fee. Registers of holders of debentures are made accessible to registered holders of debentures or shares of stock of the company and copies may be required by such holders on payment of a fee. Copies of trust deeds for securing any debenture must be furnished to holders of debentures on request and payment of fees. Failure or refusal to comply with these provisions subjects the company and officers to criminal prosecution and fine.

AUDITORS, BALANCE SHEETS, REPORTS. A new section is substituted for section 23 of the Companies Act of 1900, prescribing in more detail the duties of auditors, the object being apparently to bind the directors in the matter of their balance sheets and reports given by them. Balance sheets must be signed by two directors and the auditor's report must be attached or specifically referred to. To insure care in the selection of auditors, it is provided that nominations for auditors other than those already in office must be made at least fourteen days prior to the annual general meeting and notice must be sent by the company to the retiring auditor and to the shareholders at least seven days prior to the meeting. The penal law is applied to this case also for failure of the company or officers to comply with the requirements regarding balance sheets and reports. Reports required to be sent to the registers by section 26, Companies Act of 1862, must contain a summary "of its capital, its liabilities, and its assets, giving such particulars as will disclose the general nature of such liabilities and assets and how the values of the fixed assets have been arrived at." Reports required by section 12, Companies Act of 1900, to be forwarded to members before the annual meeting must contain an abstract of the receipts and expenditures of the company in detail, showing the source of each revenue and application of all expenditures.

GENERAL MEETINGS. The new law amends section 49 of the Companies Act of 1862 by making the company and officer criminally liable for failure to hold the general meeting at least once in the calendar year and not more than fifteen months after the general meeting previous. This section also provides relief in case of such failures and for the par-

ticipation of a company in the general meeting of any other company in which it holds shares.

WINDING UP. A liquidator in a voluntary winding up of a company must, subject to fine, file a notice of his appointment with the registrar within twenty-one days. He must also within seven days give notice to all creditors of the company of a meeting of creditors within twenty-one days and publish the notice. The creditors may accept the liquidator or ask the court for a different one and the court on such application may order a new appointment either as sole liquidator or joint liquidator. Costs and payments are to be determined by the courts. Provisions are made for determination by the courts, in regard to the sufficiency of reasons for winding up, and of the legal details connected with that process, and with appeals against the validity of the action. Directors are made criminally liable if they act without being qualified, whereas under the law of 1900 they were liable only in a civil action.

FOREIGN COMPANIES. Companies incorporated outside of the United Kingdom, but doing business therein must file with the registrar, a certified copy of their charters, statutes, and articles of association in the English language, a list of their directors, and the names of their authorized agents in the United Kingdom. They are required also to file with the registrar the summary required of domestic companies. Every foreign company which uses the word "limited" must give in its prospectuses the names of the country wherein incorporated, and must exhibit the same on its letter heads and conspicuously in its offices. Criminal liability follows default in this respect.

DEFINITIONS. Sixteen sections are added for purposes of interpretation of statutes and their applicability and the definitions and application of words and phrases.

OPERATION. The new law is made operative at once in its provisions relating to perpetual debentures and the power of a company to reissue redeemed debentures. The remainder of the law will become operative July 1, 1908.

JOHN A. LAPP.

Industrial Disputes. A law to aid in the prevention and settlement of strikes and lockouts in mines and in industries connected with public utilities, was enacted by the parliament of Canada and assented to March 22, 1907.

The law is cited as the "industrial disputes investigation act." It applies specifically to public utilities, such as gas, electric light,